

Date: April 2, 1998  
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VAOPGCPREC 5-

From: Acting General Counsel (022)

Subj: Distribution of Estate Assets

To: Under Secretary for Benefits (20)

QUESTIONS PRESENTED:

- a. What is the proper disposition of funds derived from Department of Veterans Affairs (VA) benefits and held by a legal custodian, when a beneficiary dies intestate but with known heirs?
- b. Does VA have a legal duty to supervise estate assets derived from VA benefits and in the hands of a legal custodian, after the death of the beneficiary?
- c. Does VA have authority to distribute a deceased beneficiary's estate assets, derived from VA benefit payments, and, if so, how should the distribution be made?

COMMENTS:

1. Under the facts as we understand them, these questions arise in the case of a deceased veteran whose disability compensation was being paid, at the time of the veteran's death, to a legal custodian appointed by VA pursuant to 38 C.F.R. § 13.55(b)(4) and 13.58. When the veteran died without a will, the legal custodian returned to VA unspent funds derived from VA benefits received by the custodian on the veteran's behalf. VA now holds these funds. Two children have filed claims for death benefits as the veteran's survivors.

2. The provisions of title 38, United States Code, do not address disposition of a deceased veteran's VA-derived assets in the hands of a VA-appointed legal custodian, except to the extent that 38 U.S.C. § 5502(e) provides that funds held by a VA or court-appointed fiduciary shall be returned to VA if the estate would escheat to the state under the laws of the state in which the veteran resided at the time of death. Given the absence of controlling authority under title 38, we believe that disposition of the veteran's assets derived from VA benefits should, subject to section 5502(e), be made in the same manner as

disposition of the assets of any individual who dies  
intestate. Thus,

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assets should be distributed by an appropriate estate administrator in accordance with applicable state law governing intestate succession. VA is not authorized to distribute the assets itself to the veteran's heirs. Assets which may have been returned to VA by a deceased beneficiary's legal custodian should be turned over to the administrator of the beneficiary's estate for disposition. If no estate administrator has been appointed, VA may wish to encourage an appropriate person to seek appointment or may, in the absence of action by an appropriate person, ask the probate court to appoint an administrator.

3. The state of the decedent's domicile at the time of death is controlling for purposes of determining the law applicable to disposition of the decedent's assets when the decedent dies intestate. Restatement (Second) of Conflicts of Law § 260 (1971). Assuming that the veteran was domiciled in California at the time of death, California law would apply. Under the law of California, when a decedent dies intestate, the probate court appoints an administrator to act as the decedent's personal representative for purposes of disposition of assets. Cal. Prob. Code § 8460 (Deering 1991). Possible administrators are listed in order of priority and include a child of the decedent, a "[c]onservator or guardian of the estate acting in that capacity at the time of death," a "[p]ublic administrator," or "[a]ny other person." Cal. Prob. Code § 8461 (Deering 1991). If a person otherwise entitled to appointment as administrator is under the age of majority, the court may appoint the guardian or conservator of that person or may appoint another person entitled to appointment. Cal. Prob. Code § 8464 (Deering 1991). If persons having priority fail to claim appointment as administrator, the court may appoint any other person who claims appointment. Cal. Prob. Code § 8468 (Deering 1991). California's Probate Code prescribes the laws governing intestate distribution of shares and makes the personal representative responsible for distribution of the property of the estate in compliance with the terms of a court order for distribution. Cal. Prob. Code §§ 240, 6400-6414, 11750(a).

4. We are aware of no law authorizing VA to supervise the estate of a deceased beneficiary for the benefit of the beneficiary's heirs. Title 38, United States Code, is

silent on this point. VA regulations governing appointment and supervision of fiduciaries generally suggest that VA's actions with regard to supervision of fiduciaries should be directed toward assuring protection of the beneficiaries'

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interests. See, e.g., 38 C.F.R. § 13.100(a) and (b) (referring, respectively, to "the protection of the beneficiary's interests" and "the needs of the beneficiary"). While VA may assume some residual responsibility after the death of the beneficiary to assure, through a final accounting, that the fiduciary fulfilled his or her obligations to the beneficiary and to refer to appropriate officials any evidence of malfeasance by a fiduciary, VA's responsibilities with regard to protection of estate assets for the benefit of others generally cease with the death of the veteran.

5. We note that the only provisions in part 13 of the Code of Federal Regulations which refer to actions to be taken upon the death of the beneficiary relate to escheat and recovery of funds of a veteran who dies while receiving care or treatment by VA. 38 C.F.R. § 13.110. In this regard, we believe that section 5502(e) may be construed as authorizing VA to take action to preserve estate assets until it is determined that they will not escheat to the State and thus become subject to a claim by the United States. In any case where a VA beneficiary with a Federal or court-appointed fiduciary dies without a will and without known heirs, state laws on descent and distribution must be referenced to determine whether an escheat may occur for purposes of 38 U.S.C. § 5502(e). In that case, action must be taken to protect the Government's interest in recovering VA-derived funds. That action may, in our view, include supervision of the estate to the extent necessary to protect assets which may be reclaimed by the Government.

HELD:

When a veteran or other VA beneficiary dies without a will but with known heirs, VA-derived funds held by a legal custodian should be distributed by an appropriate estate administrator in accordance with applicable state law governing intestate succession. VA is not authorized to recover such funds and distribute them to the beneficiary's

heirs. Generally, VA is authorized to supervise the estate only to the extent necessary to assure that the fiduciary fulfilled his or her responsibilities to the beneficiary and to assure preservation of assets which may be reclaimed by the Government pursuant to 38 U.S.C. § 5502(e).

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